

ATTACHMENT

LMSB PROCEDURES FOR TAX RETURN PREPARER PENALTY CASES

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LMSB RETURN PREPARER PENALTY PROGRAM PROCEDURES FOR PREPARER PENALTY CASES

INTRODUCTION

A. Taxpayer Audit

The purpose of asserting penalties on return preparers is to increase compliance. When examining a return prepared by a tax return preparer, it is an examiner's responsibility to ensure that the identification and conduct provisions of the Code were followed. If the provisions are not followed, it is the examiner's responsibility to assert the penalties. During every field examination, examiners should determine if return preparer violations exist. This determination will be made based on oral testimony and/or written evidence during the examination process.

B. Preparer Problem Identified?

No

When facts and circumstances in the examination do not give rise to the development of a penalty issue, a simple statement to that effect in the workpapers and any corresponding leadsheets is sufficient.

Yes

C. Gather Pertinent Information from Audit

Each income tax examination is separate and distinct from the return preparer violation case relating to the income tax examination. Therefore, examiners will not propose or discuss conduct penalties per se in the presence of the taxpayer.

The Interview

Interviews of the taxpayer should serve a dual purpose: 1) to further the tax examination and 2) to identify violations by a tax return preparer. During the initial interview and throughout the examination process, the examiner should ask questions regarding the return preparation as appropriate to the case and issues being developed.

Whether through the interview process or other documentation, the examiner will need to determine whether tax violations may have been committed by a person who for compensation prepared all or a substantial portion of a return.

Questions should be tailored to the individual taxpayer and situation. Examples of questions which may be appropriate to a given situation include:

Did you meet with the preparer?

What documentation was provided to the preparer?

Did you receive a copy of the return or claim?

How was the preparer compensated?

Are you aware of any errors, omissions or mistakes on the return under examination?

Did you disclose this transaction on your tax return? Why? Why not?

Were there any concerns about how the transaction was reported? What sort of process is used to address those concerns and on what basis are decisions made?

Was there any discussion regarding potential penalties?

Was there any discussion regarding whether the transaction is subject to disclosure under Revenue Procedure 94-69?

Disclosure or the lack of disclosure under Revenue Procedure 94-69 impacts the consideration of preparer penalties. If a dubious transaction is disclosed on the tax return, the transaction will have to be more egregious to warrant the imposition of preparer penalties. However, disclosure of the transaction does not in itself prohibit imposition of preparer penalties. There must still be a reasonable basis for the position (effective 5-25-2007). Under prior law (effective to 5-24-2007), the position could not be frivolous.

When interviewing the taxpayer or preparer ask if any other services are provided by the preparer's firm and how long the preparer has been preparing returns for the taxpayer? These simple questions will give you an idea of the extent of the preparer's knowledge regarding the taxpayer's financial situation/status and alert you as to the applicability of penalties. A tax return preparer who has been preparing a client's return for a number of years is more knowledgeable than a firm that is preparing a client's return for the first time.

Documentation of the Facts

The examiner should document the case file following the conversation with the taxpayer and/or Power of Attorney. While each examiner has their own interview style, examiners should be vigilant in documenting statements made during these interviews.

CAUTION: In the workpaper files examiners should only document the fact that the required inquiries on the return preparer issues were completed. The taxpayer's answers to these inquiries should not be included in any workpapers in the taxpayer's case file. All information on the return preparer's activities and the applicability of any

penalties relating to the return preparer should be separated from the taxpayer's case file. This information is then included in the return preparer penalty case file.

Disclosure Issues in Preparer Penalty Case Files:

A preparer penalty determination is an individual federal tax matter of the preparer. As with any individual tax matter, an examiner may disclose Federal tax information to that individual (the preparer in this instance), in accordance with Internal Revenue Code Section 6103(e)(1)(A)(i) or to the preparer's attorney in fact, or duly authorized power of attorney, as permitted by IRC 6103(e)(6).

Penalty files may include copies of tax returns or portions of tax returns prepared by the preparer who is being considered for the penalty. The penalty files may also include other information taken from examination administrative files, including workpapers and transcripts of account of the taxpayers whose returns were prepared by the preparer, as well as information received directly from the preparer.

Information taken from the returns or copies of returns prepared by the preparer and information from the examination files related to such returns may be incorporated into the preparer's penalty file. Such information may be disclosed to the preparer or authorized power of attorney if the information relates to the resolution of the penalty issue (IRC 6103 (h)(4)). These disclosures may be made by the examiner during the course of the penalty determination or subsequent tax administration activity.

Remember that an examiner may disclose information about the prepared returns because that information relates to the penalty determination, not because the preparer prepared the return or may have had a power of attorney to represent the taxpayer. If there is any information in the penalty file that does not relate to the penalty determination, such as the taxpayer's current address or current employer, that information may not be disclosed to the preparer or the preparer's authorized power of attorney.

If the file includes information that would seriously impair federal tax administration if disclosed, that information must be withheld by the examiner's manager in accordance with the manager's authority to withhold information in accordance with IRC 6103(e)(7) . Delegation Order 11-2 contains the specific delegation of authority. For questions on disclosure, examiners may contact LMSB disclosure at http://lmsb.irs.gov/hq/cl/new_liaison/disclosure_office.asp or the local disclosure office at <http://mysbse.web.irs.gov/CLD/GLD/Disclosure/Contacts/default.aspx>

D. Finish Income Tax Case

Generally, no return preparer penalty will be proposed until the income tax examination is completed at the group level. If the income tax case is unagreed, the examiner may pursue the preparer penalty after the unagreed income tax case is closed from the

group level. The determination and settlement of the income tax examination will at all times proceed without regard to the return preparer penalty issue.

ESTABLISHING AND WORKING A PREPARER PENALTY

E. Prepare [Form 6459](#) – Obtain Team Manager Approval

Obtain manager approval to further pursue the preparer penalty – [Form 6459](#). This form remains in preparer penalty (PP) case file.

If the manager does not approve, a simple statement to that effect in the workpapers and any corresponding leadsheets is sufficient

F. Contact the LMSB Return Preparer Coordinator (RPC)

Throughout this document, RPC refers to the LMSB RPC. See [LMSB Preparer Penalty Program](#) webpage for additional information on preparer penalties and the LMSB RPC contact information.

The RPC can advise the examiner if the return preparer is being investigated by Criminal Investigation (CI). Because of their knowledge of past and present return preparer penalty examinations, the RPC can provide invaluable assistance to the examiner at the start of their investigation regarding audit techniques, questions, and direction. In addition, the RPC can provide coordination if more than one investigation is ongoing or is contemplated.

G. Prepare [Form 5809](#) to Establish on ERCS – Not AIMS

Preparer Penalty Case

The examiner establishes ERCS control using Form 5809, Preparer Penalty Case Control Card, as the ERCS input document. These cases are not controlled on AIMS. In addition to information concerning the preparer, record on Form 5809 the relevant information from the client's tax return. Use of this document allows the establishment of the Non-AIMS case on ERCS for purposes of time application and is a means of keeping a manual record of penalty action on the preparer.

Generally, LMSB agents will use the return preparers TIN and name on the Form 5809. The examiner will prepare one Form 5809 control card for each preparer/year/proposed penalty type, regardless of the number of penalties that may ultimately be asserted. Rather than create a card for each client penalty investigation, all of the penalty examinations can be condensed into one and the sum total of hours applied and penalty amounts for each year and penalty type can be input without creating a separate Form 5809 and ERCS record for each client. In the rare situation where an active ERCS control already exists using the preparers TIN and Name, LMSB agents will use the clients TIN and "Clients Name/Preparer Name" on the Form 5809.

NOTE: Form 5345-D, Examination Request Master File, (“Blue Card”) is NOT USED to establish a preparer penalty on ERCS.

Establish a separate ERCS record for each preparer/year/proposed penalty combination using one of the following guidelines:

For cases:

- ⇒ In the TIN field, record the SSN or EIN of the Preparer
- ⇒ In the Name field, record the “Preparer’s Name”
- ⇒ In the Tax Period field, record the tax period of the client’s return.
- ⇒ In the Statute field, record the statute of the client’s return – P2 and P7 penalties should be assigned an alpha statute of “XX”.
- ⇒ In the Activity Code (ActCd) field, record one of the following codes –

ActCd	501	Section 6694(a) penalty	MFT	P1
ActCd	502	Section 6694(b) penalty	MFT	P2
ActCd	503	Section 6695(f) penalty	MFT	P3
ActCd	504	Section 6695(a), (b), (c), (d) or (e) penalty	MFT	P4
ActCd	505	Section 7407 injunctions	MFT	P5
ActCd	594	Section 6701 Aiding and Abetting	MFT	P7

ActCd	828	Indirect Exam Time – AC 828 is used for closing the investigation file when the only time charged was for attempting, unsuccessfully, to locate the preparer.
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Forward a copy of the completed [Form 5809](#) to the RPC at the start of the penalty investigation.

Consideration of Program Action Case (PAC)

If a preparer's misconduct appears to be pervasive and widespread, consideration will be given to opening a Program Action Case (PAC). PACs are preparer investigations where clients of questionable preparers are examined to determine whether preparer penalties and/or injunctive actions against the preparers are warranted. Examiners must work with their manager and the RPC to receive approval to open a PAC.

Instructions pertaining to Program Action Cases only

Source code 49 is only to be used for the primary return selected as part of the PAC. If multi-year cases are developed in Planning & Special Programs (PSP) for delivery to the groups, **only** the primary return should reflect source code 49. In addition, aging reason code 49 should be reflected on **all return preparer program returns including the primary and multiple-year returns.**

H. Determine Statute

The statute of limitations on assessment for IRC sections 6694(a) and 6695 expires three years from the later of the due date of the related (client) return or the date the return was filed. There is no statute of limitations on assessment for IRC sections 6694(b), 6700, and 6701 penalties. There is no statute of limitations on actions to enjoin preparers or promoters under IRC section 7407 or 7408.

CAUTION: Extending the statute on a client taxpayer's return with a Form 872 does not extend the statute for the return preparer penalty case.

Is the Statute of Limitations greater or less than 180 days?

Greater

[Go to the next step I \(Charging time to Preparer Penalty Case\).](#)

Less

Preparer Agrees to extend

The statute on a return preparer penalty case under IRC sections 6694(a) and 6695 can be extended using [Form 872-D](#), Consent to Extend the Time on Assessment of a Tax Return Preparer Penalty, and Letter 907-P, Request for Statute Extension. (See Rev. Rul. 78-245.) Attach a copy of Letter 907-P to the executed consent in the case file. A transcript of the return on which the preparer penalty is based should be included in the preparer penalty case file for accurate monitoring of the expiration date.

[Go to the next step I \(Charging time to Preparer Penalty Case\).](#)

Preparer does not agree to extend

[Go to Q \(Process as Unagreed Case\).](#)

I. Charging Time to Preparer Penalty Case

Use one of the following codes:

ActCd 501	Section 6694(a) penalty	MFT	P1
ActCd 502	Section 6694(b) penalty	MFT	P2
ActCd 503	Section 6695(f) penalty	MFT	P3
ActCd 504	Section 6695(a), (b), (c), (d) or (e) penalty	MFT	P4
ActCd 505	Section 7407 injunctions	MFT	P5
ActCd 594	Section 6701 penalty	MFT	P7

ActCd 828 Indirect Exam Time - AC 828 is used for closing the investigation file when the only time charged was for attempting, unsuccessfully, to locate the preparer.

J. Forward a Copy of the Completed [Form 5809](#) to the RPC at the Start of the Penalty Investigation.

K. Contact Preparer and Conduct Interview

[Click here to review Item “C” above.](#)

L. Are Preparer Penalties Warranted?

Note: Team managers should be involved in the development of the penalty so as to assist in making the decision if a penalty is warranted.

Yes, assessing preparer penalties other than Sec. 6701. [Go to next step N \(Prepare Form 5816 and Report\)](#)

Yes, assessing 6701 Penalties. [Go to next step R \(IRC Section 6701 Penalty Report\)](#)

[No, go to next step M \(Group Closes Case No Change\)](#)

CLOSING THE PREPARER CASE

M. Group Closes Cases No Change

1. The team manager will review the investigation file and document concurrence.
2. The examiner will prepare [Letter 1120](#), Preparer Penalty No-Change Case Letter, mail the original to the preparer and include a copy in the case file.
3. The examiner will complete [Form 5809](#).
4. The examiner will notate workpapers “Closed No Change”.
5. The group will update ERCS to status 02 “Closed – No Change” and forward the case to the RPC for review.
6. The RPC will extract pertinent information from the file to be retained for not less than one year. The balance of the no-change case file will not be retained.

N. Prepare [Form 5816](#) and Report

The preparer should be afforded an opportunity to meet with the Team Manager to resolve unagreed issues. Document the actions taken on [Form 4665](#), Report Transmittal, if the preparer does not agree. Examiners give to the preparer [Form 5816](#), Report of Income Tax Return Preparer Penalty, and Form 886-A, Explanation of Items.

When penalties are based on many different prepared returns, attach a list of client names, SSNs/EINs and tax periods. Use a separate form for each year/return combination. If penalties are being proposed via mail, send Letter 1125, Preparer Penalty 30-Day Letter, along with the [Form 5816](#) and Form 886-A.

O. Is This an Agreed Case?

No, Unagreed. [Go to next step Q \(Process as an Unagreed Case\)](#)

Yes, Agreed. [Go to next step P \(Process as Agreed Case\)](#)

P. Process as Agreed Case

Preparer signs [Form 5816](#). Solicit payment from preparer and if payment made, prepare [Form 3244-A](#). Also secure [Form 5838](#), Waiver of Restrictions on Assessment and Collection of Tax Return Preparer Penalty. Complete [Form 8278](#), Computation and Assessment of Miscellaneous Penalties. When more than one penalty under different IRC sections will be assessed against the same preparer for the same period, complete a separate [Form 8278](#) for each penalty. Attach [Form 3198](#), Special Handling Notice, to each penalty case file, identifying it as a return preparer penalty case in the "Special Features" section and referencing the applicable IRC section. If the preparer filed a joint income tax return, annotate with either "Assess on Primary SSN" or "Assess on Secondary SSN" in the 'Other Instructions' Section to identify the individual against whom the penalty is to be asserted.

Determine the statute of limitations. If less than the four months required to process an agreed case, it will be necessary to extend the statute. The statute on a return preparer penalty case under IRC sections 6694(a) and 6695 can be extended using [Form 872-D](#), Consent to Extend the Time on Assessment of a Tax Return Preparer Penalty. (See Rev. Rul. 78-245.) A transcript of the return on which the preparer penalty is based should be included in the preparer penalty case file for accurate monitoring of the expiration date. If the statute is less than four months and the preparer refuses to sign the consent, complete [Form 2859](#), Request for Quick or Prompt Assessment. See [Form 2859](#) for LMSB quick/prompt processing instructions

When a **IRC § 6694(a)**, **IRC § 6694(b)**, **IRC § 6695(f)** or **IRC § 6701** penalty is asserted against an attorney, certified public accountant, enrolled agent or enrolled actuary and is closed agreed by the examiner or sustained in Appeals, or closed unagreed without Appeal contact, a referral to the Director, Office of Professional Responsibility is mandatory. Use [Form 8484](#). Instructions on how to make a referral to OPR and the forms to be used can be found in the OPR website at <http://nhq.no.irs.gov/OPR/>

Send to the RPC copies of Form 8278, Form 8484, Form 5816, Report of Income Tax Return Preparer Penalty, and Form 886-A, Explanation of Items.

The group clerk will update the return preparer case on ERCS to status 51 and close the case to the Centralized Case Processing unit via Form 3210.

Q. Process as Unagreed Case

Determine the statute of limitations. If the closing will take place in less than the six months required to process an unagreed case, it will be necessary to extend the statute. The statute on a return preparer penalty case under IRC sections 6694(a) and 6695 can be extended using [Form 872-D](#), Consent to Extend the Time on Assessment of a Tax Return Preparer Penalty. (See Rev. Rul. 78-245.) A transcript of the return on which the preparer penalty is based should be included in the preparer penalty case file for accurate monitoring of the expiration date.

If the closing will take place in less than the six month months required to process the case **and** the preparer refuses to sign the consent, send the preparer a *Report of Income Tax Return Preparer Penalty* [Form 5816](#), with the preparer signature part of the report removed along with an explanation of the reason for the quick assessment and a discussion of the preparer's Appeals rights. [Letter 1125](#), Preparer Penalty 30-Day Letter, is not sent to the preparer. Complete [Form 8278](#), Computation and Assessment of Miscellaneous Penalties, and [Form 2859](#), Request for Quick or Prompt Assessment. See [Form 2859](#) for LMSB quick/prompt processing instructions. Upon request, the preparer will be provided the same Appeals rights post-assessment as would have been provided if the request for Appeals consideration was received before the assessment.

If adequate time on the statute exists to process the unagreed case closing, the examiner provides the preparer with: [Letter 1125](#), Preparer Penalty 30-Day Letter; [Form 5816](#), Report of Income Tax Return Preparer Penalty, with the preparer signature part of the form removed; Form 886A, Explanation of Items; [Form 5838](#), Waiver of Restrictions on Assessment and Collection of Tax Return Preparer Penalty, along with Pub 1, Pub 5 and Pub 594. The case then goes into suspense for 30 days, during which time the preparer may agree or protest. If response is agreed or there is no response, follow the procedures above for closing case as agreed ([Go to next step P](#)).

When a **IRC § 6694(a)**, **IRC § 6694(b)**, **IRC § 6695(f)** or **IRC § 6701** penalty is asserted against an attorney, certified public accountant, enrolled agent or enrolled actuary and is closed agreed by the examiner or sustained in Appeals, or closed unagreed without Appeal contact, a referral to the Director, Office of Professional Responsibility is mandatory. Use [Form 8484](#). Instructions on how to make a referral to OPR and the forms to be used can be found in the OPR website at <http://nhq.no.irs.gov/OPR/> For cases going to Appeals, the form should be prepared and included in the case file.

Protest: If the preparer submits a pre-assessment protest (written) within 30 days, the examiner will review the adequacy of the protest. The examiner will prepare an assessment document, [Form 8278](#), Computation and Assessment of Miscellaneous Penalties. When more than one penalty under different IRC sections will be assessed against the same preparer for the same period, complete a separate Form 8278 for each penalty. With the team manager's concurrence, the group will then update ERCS

to Status 21 and forward the case through Technical Services to Appeals via Form 3210.

The following information should be included on the T-Letter for cases submitted to Appeals.

- Special action requirement for receiving Appeals Officer
- As of 7/23/2003, preparer and promoter penalties are coordinated as an Appeals Coordinated Issue:
<http://appeals.web.irs.gov/ispaci/apcoordissues.htm#Preparer/PromoterPenalties>
- Under the provisions of IRM 8.7.3.11, the Appeals Officer is required to contact/make a referral to Technical Guidance. Referral procedures and forms are located at
http://appeals.web.irs.gov/lbsp/documents/Technical_Guidance_Referral_Procedures.pdf
- The coordinator for this issue is Michael Drury, phone number: 720-956-4518
- Referral Form 13381 can be emailed to Appeals Team Manager Steven Onken, phone number: 651-726-7406.

An unagreed preparer penalty investigation file cannot be submitted to Appeals for pre-assessment consideration if there is less than 180 days remaining on the assessment statute of limitations. [Form 872-D](#) is used to extend the statute in a preparer penalty investigation.

Appeals and Unagreed Closings: The unagreed preparer penalty investigation file can not be submitted to Appeals before the tax examination case file. The preparer penalty case would be suspended in the group until such time as it can be closed.

Send to the RPC copies of Form 8278, Form 8484, Form 3210, Form 5816, Report of Income Tax Return Preparer Penalty, and Form 886-A, Explanation of Items.

R. IRC Section 6701 Penalty Report

The preparer should be afforded an opportunity to meet with the Team Manager to resolve unagreed issues. Document the actions taken on [Form 4665](#), Report Transmittal, if the preparer does not agree. Examiners are to provide the preparer with Form 886-A, Explanation of Items. When penalties are based on many different prepared returns, attach a list of client names, SSNs / EINs and tax periods. See [IRM Exhibit 20.1.6-3 Section 6701 Pre-Assessment Letter](#).

When a **IRC § 6694(a)**, **IRC § 6694(b)**, **IRC § 6695(f)** or **IRC § 6701** penalty is asserted against an attorney, certified public accountant, enrolled agent or enrolled actuary and is closed agreed by the examiner or sustained in Appeals, or closed unagreed without Appeal contact, a referral to the Director, Office of Professional Responsibility is

mandatory. Use [Form 8484](#). Instructions on how to make a referral to OPR and the forms to be used can be found in the OPR website at <http://nhq.no.irs.gov/OPR/>

S. Preparer Agrees to Section 6701 Penalty?

No, Unagreed. [Go to next step U \(Process as Unagreed Section 6701 Case\)](#)

Yes, Agreed. [Go to next step T \(Process as Agreed Section 6701 Case\)](#)

T. Process as Agreed Section 6701 Case

Solicit payment from preparer and if payment made, prepare [Form 3244-A](#). Secure [Form 5838](#), Waiver of Restrictions on Assessment and Collection of Tax Return Preparer Penalty. Complete [Form 8278](#), Computation and Assessment of Miscellaneous Penalties. If penalties under different IRC sections will be assessed against the same preparer for the same period, complete a separate [Form 8278](#) for each penalty.

Attach [Form 3198](#), Special Handling Notice, to each penalty case file, identifying it as a return preparer penalty case in the "Special Feature" section and referencing the applicable IRC section. If the preparer filed a joint income tax return, annotate with either "Assess on Primary SSN" or "Assess on Secondary SSN" in the 'Other Instructions' Section to identify the individual against whom the penalty is to be asserted.

Examiner should file [Form 8484](#) with the Office of Professional Responsibility.

Send to the RPC copies of the Form 8278, Form 8484, and Form 886-A, Explanation of Items.

The group clerk will update the return preparer case on ERCS to status 51 and close case to the Centralized Case Processing unit via Form 3210

U. Process as Unagreed Section 6701 Case

Complete [Form 8278](#), Computation and Assessment of Miscellaneous Penalties. If penalties under different IRC sections will be assessed against the same preparer for the same period, complete a separate [Form 8278](#) for each penalty. If the preparer filed a joint income tax return, annotate with either "Assess on Primary SSN" or "Assess on Secondary SSN" in the 'Other Instructions' Section to identify the individual against whom the penalty is to be asserted.

Assess penalty by completing [Form 2859](#), Request for Quick or Prompt Assessment. See [Form 2859](#) for quick/prompt processing instructions. The preparer has no pre-assessment appeal rights. The assessment will generate a notice to the preparer which explains the assessment and appeal rights. Request that the preparer file any claims within the 30-day window with the examination team. This will allow for an orderly transfer of the files to Appeals.

Suspense case. See IRM 20.1.6.1.4 – Claims which enables preparer an administrative appeal. Within 30 days from the date of assessment, preparer may pay 15 percent of the penalty and file Form 843, Claim.

If claim filed: If the preparer files a timely claim and makes a timely payment of 15 percent of the penalty, prepare [Form 3244-A](#) to process the payment. Associate the claim with the penalty case file. The examiner will notify the preparer of the claim disallowance and that the case will be forwarded to Appeals. [Form 8484](#) should be prepared and included in the case file sent to Appeals. Update ERCS to Status 21 and forward the entire package through Technical Services to Appeals via Form 3210. Send to the RPC copies of Form 8278, Form 8484, Form 3210, and Form 886-A, Explanation of Items.

The following information should be included on the T-Letter for cases submitted to Appeals.

- Special action requirement for receiving Appeals Officer
- As of 7/23/2003, preparer and promoter penalties are coordinated as an Appeals Coordinated Issue:
<http://appeals.web.irs.gov/ispaci/apcoordissues.htm#Preparer/PromoterPenalties>
- Under the provisions of IRM 8.7.3.11, the Appeals Officer is required to contact/make a referral to Technical Guidance. Referral procedures and forms are located at
http://appeals.web.irs.gov/lbsp/documents/Technical_Guidance_Referral_Procedures.pdf
- The coordinator for this issue is Michael Drury, phone number: 720- 956- 4518
- Referral Form 13381 can be emailed to Appeals Team Manager Steven Onken, phone number: 651-726-7406.

If no claim is filed, Attach [Form 3198](#), Special Handling Notice, to each penalty case file, identifying it as a return preparer penalty case in the “Other” section and referencing the applicable IRC section. Annotate in the ‘Other’ Section that the penalties have been assessed prior to closing. File [Form 8484](#) with the Office of Professional Responsibility. The group clerk will update the return preparer case on ERCS to status 51 and close case to the Centralized Case Processing unit via Form 3210. Send to the RPC copies of the Form 8278, Form 8484, Form 3210, and Form 886-A, Explanation of Items.

Forms

Form 6459, Return Preparers Checksheet

Note the entries that are required in Part II, specifically, the name and address of the return preparer along with the SSN/EIN. The manager's signature is required to pursue the return preparer penalty investigation. If the manager signs the form, then the form goes with the return preparer penalty case. Otherwise, it remains with the clients return as part of the documentation that the return preparer penalty was considered.

Form 872-D, Consent to Extend the Time on Assessment of Tax Return Preparer Penalty

The statute of the return preparer penalty case is the statute of the clients return. Extending the statute of limitations of the client's return with a Form 872 does not extend the statute for the return preparer penalty case.

Form 5838, Waiver of Restrictions on Assessment & Collection of Tax Return Preparer Penalty

The form number of return for which the penalty is being charged relates to the clients income tax return. The taxpayers name as shown on the return is the clients' name. Taxpayers Identifying number is the clients. Tax period relates to the tax period of the clients return. The kind of penalty refers to the code section and the amount of penalty is self explanatory.

Form 5816, Report of Income Tax Return Preparer Penalty Case

Note: This form is not used for Section 6701 penalty cases.

Note: This form is prepared somewhat differently than the Form 5809.

The information that is included in the top part of the Form 5816 is that of the preparer including the Name, Address and SSN or EIN. The second part of the form that begins with 'The following information identifies the tax return....' Relates to the client income tax return on which the penalty was based. When penalties are based on many different prepared returns, attach a list of client names, SSNs / EINs and tax periods. Use a separate form for each year / return combination.

If the case is agreed, then the preparer signs the form at the bottom. If the case is disagreed, then the bottom part of the form needs to be removed at the dotted line.

Form 8278, Computation & Assessment of Miscellaneous Penalties

A Form 8278 must be filled out for each calendar year warranting penalty assessments.

The information requested in Items 1, 2, and 7 (Name, Address and SSN or EIN) relate to the return preparer. The information requested in items 5 and 6 (Year and Statute Date) refer to the client return that was the impetus for the penalty.

In completing Form 8278, originators will enter in red and initial: The applicable statute of limitations on assessment expiration date in Item 6 (or, if applicable, enter "No Statute" in Item 4), and; The date the Form 8278 was completed by the originator in Item 9 or 11.

When the same penalties for the same period apply to a preparer for more than one return and the statute of limitations on the preparer penalty is determined by the statute of limitations for the return, complete Form 8278 using the earliest statute of limitations date. (See IRM 20.1.6.1.8.Statute of Limitations.). When more than one penalty under different IRC sections will be assessed against the same preparer for the same period, a separate Form 8278 has to be completed for each penalty.

Form 8484, Report of Suspected Practitioner Misconduct

Once it has been determined that a referral is necessary, a referral package to the Office of Professional Responsibility (OPR) must be prepared and closed separately from the related case.

Instructions on how to make a referral to OPR and the forms to be used can be found in the OPR website at <http://nhq.no.irs.gov/OPR/>

The workpapers for the related income tax case should note the referral was prepared and forwarded to OPR for any cases without Appeals activity. For cases going to Appeals, the form should be prepared and included in the case file.

In cases in which a referral is not prepared but was considered, a comment should be made in the workpapers explaining why the referral was not made.

Form 4665, Report Transmittal

This form is used to summarize unagreed issues and present information of a confidential nature for Appeals. The information should supplement, not duplicate or replace information in the case file. On field cases, this form is used in conjunction with Form 9984, Examining Officer's Activity Record, to document managerial involvement.

Confidential information included on the report transmittal includes:

- a. Statements and facts involving allegations of fraud;
- b. Remarks regarding the integrity, motives, or abilities of the preparer;
- c. Ability to pay;

- d. Potentially dangerous taxpayers;
- e. Procrastination by the preparer or representative;
- f. Other confidential information which should not be made available to the preparer.

Form 3244-A, Payment Posting Voucher

Upon acceptance of an advance payment (tendered before or after a deficiency has been determined and an agreement has been secured from the taxpayer), the responsible examiner will complete a separate Form 3244-A, Payment Posting Voucher -- Examination, for each tax period and class of tax involved, as follows:

- a. SSN/EIN -- Enter the preparers identification number
- b. Form No./MFT -- Form numbers and MFT codes can be found in the ADP and IDRS Information Handbook, Document 6209. This handbook is updated annually.
- c. Tax Period -- Enter "YYYYMM", e.g., -- quarterly return ending June 30, 2002 will be shown as "200206". The tax period corresponds to the tax period of the client's income tax return.
- d. Transaction/Received Date -- Enter the date the remittance was received by the responsible examiner, e.g., June 30, 2002 will be shown 06-30-2002.
- e. Taxpayer -- Enter the preparers' full name, address, and ZIP code.
- f. Transaction Data -- Enter the total amount of the payment opposite the transaction Code (any breakdown is entered in Remarks).

In the Remarks Section:

Indicate the pertinent information regarding the transaction such as:

- a. The amount of payment allocated for the penalty, and interest as well as any special instructions.
- b. Where date of an agreement precedes the date of the advance payment by more than 30 days, enter the agreement date.
- c. Where first payment is not for full amount of deficiency enter "Part Payment"; or if part payment is other than the first payment, designate the payment, e.g., "2nd Payment".
- d. If a payment is received that will be applied to more than one period, indicate "split remittance" in the remarks section of Form 3244-A.
- e. Prepared By -- Enter the two-digit area office code, the office symbol, name and telephone number (including area code) so that the preparer of Form 3244-A may be contacted if necessary.

Forwarding Form 3244-A

Follow most current procedures for processing. [See memo from Director, Performance Management, Quality Assurance, and Audit Assistance on the subject Large Dollar Remittance Processing dated March 30.](#)

Form 2859, Request for Quick or Prompt Assessment

- (1) Follow procedures in [Memo from Director, Case Processing SBSE on the subject Direct Shipment to CCP for LMSB groups and Technical Services offices dated April 5, 2005](#)

Note: Ogden contact per the memo is no longer Michael Mayhue but Wendy Jones, 801-620-2102

- a. Indicate in "Remarks" if billing needs to be withheld.
- b. Enter the 23C Date and the DLN assigned.
- c. Enter an agreement date only if the taxpayer signed an agreement and interest is being assessed with TC 190.
- d. Do NOT compute interest on civil penalty assessments.

Form 5809, Preparer Penalty Case Control Card

- Original - remains in PP case file
- Copy A – Group control card
- Copy B – As attachment to Form 895 if applicable
- Copy C – To return to RPC (Return Preparer Coordinator) at start
- Copy D – Close case file

Establish ERCS Controls using Form 5809, Preparer Penalty Case Control Card, as the ERCS input document. Preparer penalty investigations are NOT controlled on AIMS

NOTE: Form 5345, Examination Request Master File, ("Blue Card") is NOT USED to establish a preparer penalty on ERCS.

Form 3198, Special Handling Notice for Examination Case Processing

- Examiners will attach Form 3198, Special Handling Notice, to each preparer penalty case file, identifying it as a return preparer penalty case and referencing the applicable IRC section. Annotate with "Return Preparer Penalty Case" in the 'Other' section and reference the applicable IRC Section(s).
- If the preparer filed a joint income tax return, annotate with either "Assess on Primary SSN" or "Assess on Secondary SSN" in the 'Other' Section to identify the individual against whom the penalty is to be asserted.

- Annotate Form 3198 with “Quick Assessment” on the ‘Other’ line in the ‘Expedite’ section if the case is being closed expedited.

Letters

Letter 1120, Preparer Penalty No-Change Case Letter

After review by the Group Manager, mail the original to the preparer and include a copy in the case file.

Letter 1125, Preparer Penalty 30-Day Letter

Letter 907P, Request for Statute Extension Letter